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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-576

PHILIP A. ROBINSON, JACOB A. ROBINSON and KATE ROBINSON,

Petitioners,

vs.

DR. LLOYD W. McCORKLE, Commissioner, Individually and as Head of the Department of Institutions and Agencies; DR. RUFUS R. LITTLE, Individually and as Superintendent of Bergen Pines County Hospital; BERGEN PINES COUNTY HOSPITAL; RALPH W. CHANDLESS, Borough Attorney; HARRY H. CHANDLESS, JR., Municipal Magistrate; JOHN KAPHON, Clerk, Municipal Court; ARTHUR H. VAN HOUTEN, Chief of Police; CAPT. WILLIAM D. NOONAN; SGT. HOWARD R. BAKER, JR.; SGT. EUGENE F. DATES; SGT. GIRARD K. DOMMENGE; PTL. PETER A. BRUINOOGE; PTL. BRUCE H. WERNER; SGT. HARRY P. CARTY, JR.; PTL. DONALD E. WORSTER; PTL. WILLIAM H. BISCHOFF; Ex-Chief HARRY P. CARTY, SR.; Ex-PTL. JOHN W. RUROEDE, JR., Individually and as Police Officers,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION

Statement of Issues Presented

1. Whether plaintiff's Amended Complaint states a cause of action against each named defendant cognizable within the jurisdiction of the District Court of the United States?

2. Whether the District Court properly dismissed Plaintiff's Third and Fourth Causes of Action asserted on behalf of the parents of Philip A. Robinson and based on an alleged deprivation of Philip Robinson's civil rights?

Counter-Statement of Procedure and Facts

The instant civil rights action, instituted on behalf of Philip Robinson, and Jacob A. Robinson and Kate Robinson, Philip's parents, was commenced by the filing of a Complaint on December 16, 1969. Named as parties defendants were some twelve police officers of the Borough of Hasbrouck Heights, a municipal magistrate, a municipal prosecutor, a municipal clerk, a municipal attorney, Dr. Lloyd W. McCorkle, Commissioner of the New Jersey Department of Institutions and Agencies, Bergen Pines County Hospital and Dr. Rufus R. Little, Superintendent of Bergen Pines.

Following service of the Complaint each of the defendants moved to dismiss the Complaint, asserting various bases in support of their respective applications, among which were the contentions that the original Complaint failed to state a cause of action as to each defendant sufficient in invoke the jurisdiction of the United States District Court.

Following argument the Court ruled that plaintiff's original Complaint failed to state a cause of action against Dr. Lloyd W. McCorkle, Dr. Rufus R. Little and Bergen

Pines County Hospital. However, prior to entry of an Order of Dismissal in accordance with Judge Whipple's ruling, plaintiff was accorded the right to amend his fifth cause of action to assert additional bases supportive of allegations that the New Jersey commitment statutes were unconstitutional.

Purportedly, acting pursuant to the order of the court, although clearly not in accordance therewith, plaintiffs subsequently filed an amended complaint wherein all of the allegations of all causes of action were amplified and supplemented to embody a potpourri of additional factual contentions.

As amended, plaintiff's complaint asserts four substantive causes of action in addition to plaintiffs' prayer for the empanelment of a three-judge federal court to adjudicate the constitutionality of N.J.S. 30:4-26.3, The New Jersey Temporary Commitment Statute.

Essentially, as gleaned from the amended complaint, plaintiffs' civil rights contentions stem from an automobile accident which occurred on April 18, 1968. As set forth under the designation, "First Cause of Action," plaintiff, Philip Robinson, alleges that on April 18, 1968, he was committed to Bergen Pines following an automobile accident wherein his vehicle allegedly struck the rear of a police car five times. Charged with atrocious assault and battery on a police officer, plaintiff was arrested and taken to the Municipal Magistrate for purpose of fixing bail and affording plaintiff a preliminary hearing. At that time plaintiff appeared to be violent and incoherent and the court was advised by plaintiff's attorney that plaintiff would not permit arrangements to be made for bail. He appeared to be of unsound mind and dangerous and was consequently committed to the Division of Psychi-

atry at Bergen Pines where he was confined for fourteen days, subsequently to be released to Fair Oaks Hospital where he voluntarily committed himself.

On April 22, 1968, pursuant to request made, Bergen Pines advised Magistrate Chandless of its findings, stating that plaintiff "psychiatrically is a sick man. He is unable to form abstract concepts. His reality orientation is poor and he appears to be hearing voices. These features combined with his behavior in the ward in general leads me to conclude that he is suffering from a schizophrenic illness."

As set forth in plaintiff's first cause of action, plaintiff alleges that while confined to Bergen Pines, he "was strapped to a bed, forcibly injected with muscle spasm medicine, sexually assaulted, rendered immobile and left to suffer in a small cell."

Plaintiff's second cause of action alleges that on November 6, 1969, Philip Robinson was again seized by the Hasbrouck Heights Police on charges of threats to kill and assault and battery and was again committed to Bergen Pines. Plaintiff alleges that during the course of his second confinement "he was placed in a bedless cell and left to deteriorate for a week," and physically assaulted by "unknown attaches" (P21a). Following thirteen days of confinement, plaintiff was transferred to the care of Carrier Clinic in Belle Meade pursuant to an Order of Judge Morris Malech of the Bergen County Superior Court which recited that plaintiff, having appeared in open Court, "has not yet been cured of his condition" "and requires further care and treatment."

The third and fourth causes of action were filed on behalf of the parents of Philip Robinson, Jacob and Kate Robinson. Both counts allege derivative injury and seek

damages resulting from allegedly harmful publicity, notoriety, humiliation, and physical and emotional distress resulting from the plight of their son, Philip.

In light of plaintiff's amended complaint, fraught with additional allegations, it again became necessary for each defendant to move to dismiss the Amended Complaint.

The District Court granted the motion of all defendants to dismiss the first cause of action except as to defendants Harry Carty, Sr., Dr. Rufus R. Little and Dr. Lloyd McCorkle. The court further granted the defendants' motions to dismiss the second cause of action except as to defendants Noonan, Carty, Jr., Van Houten, Baker Jr., Dates, Worster, Werner, Bischoff, Lloyd McCorkle and Rufus R. Little. The Motion of all defendants to dismiss the third and fourth causes of action were granted, the court holding that plaintiffs had failed to allege the deprivation of any constitutional guaranties on behalf of Kate and Jacob Robinson and that the claim of parents for physical and emotional distress is not actionable under 42 U.S.C. §1983 or 1985. The court declined to dismiss plaintiffs' first and second causes of action against Dr. Rufus Little and Dr. Lloyd McCorkle to afford plaintiff an opportunity through pretrial discovery to ascertain and identify those individuals allegedly responsible for asserted brutalities while plaintiff was confined to Bergen Pines.

Considering the Amended Complaint "in the best possible light" Judge Whipple was able to envision two incidents which, if proved, could arguably support a claim for relief against employees of Bergen Pines; i.e., plaintiff's charge that "he was subjected to excessive force by way of restraint and sexual assault during his commitment to Bergen Pines" (P49a) and plaintiff's contention

that he was "beaten by unknown 'attaches' at Bergen Pines County Hospital for his refusal to take certain drugs" (P52a).

From that determination, plaintiff appealed to the Third Circuit Court of Appeals, which court affirmed the Rulings of the District Court in their entirety.

Reason for Denying the Writ of Certiorari

It is submitted that the instant case presents no unusual or important issues to warrant grant of certiorari, nor does plaintiff's brief suggest basis for such relief. The Courts below complied fully with the accepted, proper course of judicial procedure. Replying to each enumerated reason asserted by petitioners, we note the following:

1. This argument, as is true of petitioner's points 2 and 3, was not presented to the Courts below and is without merit. The opinions of the Courts below do not intimate reliance on affidavits.

2. See No. 1.

3. See No. 1.

4. Substantial case law refutes plaintiff's reliance on dissenting opinions emanating from anti-trust litigation, which cases by their very nature present proof problems of vast complexity to pose special considerations not applicable herein. The dismissals entered below were based on clearly established principles of law involving the applicability of 28 U.S.C. Sec. 1983, 1984 and 1985 and the fact the Complaint failed to allege any acts or reveal any improper conduct on the part of certain designated defendants. See, e.g., *Kauffman* v. *Moss*, 420 F. 2d 1270 (3d Cir. 1970); *Weyandt* v. *Mason Stores, Inc.*, 29

F. Supp. 283 (W. D. Pa. 1968); *Negrich* v. *Hahn*, 379 F. 2d 213 (3rd Cir. 1967). Thus, the Court of Appeals found the remaining defendants were the "only defendants having any real connection, through specific acts, with the allegations of the Complaint" (17a). Further, the motion to dismiss did not constitute a motion for summary judgment, but a motion pursuant to Rule 12b attacking the jurisdictional requisites and the sufficiency of the allegations of the Complaint.

5. See No. 4.

6. See No. 4.

7. Substantial case law establishes the propriety of the Court's rulings below. See also No. 4.

8. Petitioner misconstrues the holdings of the Courts below. See also No. 4.

9. The ruling below is in complete accord with established case law.

10. The ruling below is in complete accord with established case law.

11. Even plaintiff agreed in his argument below that a county hospital cannot be sued under Section 1983 unless equitable relief is sought. See e.g. *Monroe* v. *Pape*, 365 U. S. 167 (1961); *Spampinato* v. *M. Brager & Co.*, 270 F. 2d 46 (2nd Cir. 1959). No such relief is sought herein. The Court below, analyzing the decisions relied on by plaintiff, properly held "appellant's arguments are rendered groundless" (17a).

12. See No. 9. The derivative claim of Philip Robinson's parents for physical and emotional distress are clearly not actionable. See *Spampinato*, *supra*.

CONCLUSION

It is respectfully submitted the petition should be denied.

Respectfully submitted,

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